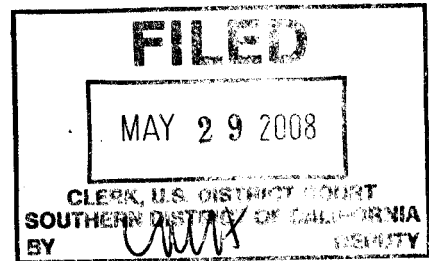


1 KAREN P. HEWITT
United States Attorney
2 CALEB E. MASON
Assistant United States Attorney
3 California State Bar No. 246653
United States Attorney's Office
4 Federal Office Building
880 Front Street, Room 6293
5 San Diego, California 92101
Telephone: (619) 557-5956
6
7 Attorneys for Plaintiff
UNITED STATES OF AMERICA



8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)

Magistrate Case No. 08MJ1510

11 Plaintiff,)

12 **STIPULATION OF FACT AND JOINT**
13 **MOTION FOR RELEASE OF**
14 **MATERIAL WITNESS(ES) AND**
15 **ORDER THEREON**

13 v.)

14 DAVID CASTELLANOS-FLORES,)

15 Defendant.)

(Pre-Indictment Fast-Track Program)

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caleb E.
18 Mason, Assistant United States Attorney, and defendant DAVID CASTELLANOS-FLORES, by
19 and through and with the advice and consent of defense counsel, Hanni M. Fakhoury, that:

20 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
21 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
22 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
23 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
24 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
25 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

26 //

27 //

28 CEM:lg:5/18/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **June 16, 2008**.

6 4. The material witnesses, Fredy Rosas-Rangel, Isabel Cruz-Hernandez and Norberto
7 Hernandez-Aguila, in this case:

8 a. Are aliens with no lawful right to enter or remain in the United States;

9 b. Entered or attempted to enter the United States illegally on or about
10 May 13, 2008;

11 c. Were found in a vehicle driven by defendant at the San Ysidro, California,
12 Port of Entry (POE), and that defendant knew or acted in reckless disregard of the fact that they were
13 aliens with no lawful right to enter or remain in the United States;

14 d. Were paying or having others pay on their behalf an unknown amount up to
15 \$3,500 to others to be brought into the United States illegally and/or transported illegally to their
16 destination therein; and,

17 e. May be released and remanded immediately to the Department of Homeland
18 Security for return to their country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
22 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
23 attack, that:

24 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
25 substantive evidence;

26 b. The United States may elicit hearsay testimony from arresting agents
27 regarding any statements made by the material witness(es) provided in discovery, and such

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
2 against interest of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
4 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
5 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
9 further that defendant has discussed the terms of this stipulation and joint motion with defense
10 counsel and fully understands its meaning and effect.


11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
12 immediate release and remand of the above-named material witness(es) to the Department of
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.

15 Respectfully submitted,

16 KAREN P. HEWITT
United States Attorney

17
18 Dated: 5/29/08.

19 
CALEB E. MASON
Assistant United States Attorney

20
21 Dated: 5/22/08.

22 
HANNI M. FAKHOURY
Defense Counsel for
DAVID CASTELLANOS-FLORES

23
24 Dated: 5/22/08.

25 
DAVID CASTELLANOS-FLORES
Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 5/29/08.


United States Magistrate Judge